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OFFICE OF PETITIONS

FINA TECHNOLOGY INC
PO BOX 674412
HOUSTON TX 77267-4412

In re Application of :
Sinoy et al. : DECISION ON PETITION
Application No. 10/816,462 :
Filed: April 1, 2004 :
Atty Docket No. F-918 (31223. :
00035) :

This is a decision on the PETITION UNDER 37 CFR §1.181 TO
WITHDRAW HOLDING OF ABANDONMENT filed October 3, 2007.

The petition is **DISMISSED**.

Any request for reconsideration pursuant to § 1.181 must be
filed within **TWO (2) MONTHS** of the date of this decision in
order to be considered timely. See 37 CFR §1.181(f).
Extensions of time under §1.136(a) are not permitted

The above-identified application became abandoned for failure to
file a timely and proper reply to the final Office action mailed
September 1, 2005. This Office action set a shortened statutory
period for reply of three (3) months, with extensions of time
obtainable under § 1.136(a). A reply was filed on November 29,
2006. The response was considered by the examiner but
determined not to place the application in condition for
allowance. See Advisory Action mailed December 18, 2006.
Further, terminal disclaimer was filed on January 3, 2007 (and
fee submitted by mail filed January 8, 2007)¹. However, as
stated on the Notice of Abandonment, the Terminal Disclaimer was
not proper as it did not give the correct application number.

¹ The extension of time for response within the second month necessary to make
this reply filed Wednesday, January 3, 2007 by facsimile with the balance
submitted by mail on January 8, 2007 timely has been charged to Deposit
Account No. 50-2225, as authorized. January 2, 2007 was not a federal
holiday, and no review of Office notices indicates that January 2, 2007 was
designated by the USPTO as a holiday or that the Office was otherwise closed.

The courtesy Notice of Abandonment was mailed on August 31, 2007.

Relying on a telephone interview of January 3, 2007 and the terminal disclaimer filed January 3, 2007 petitioner requests that the holding of abandonment be withdrawn. Petitioner acknowledges that the terminal disclaimer filed January 3, 2007 did not disclaim the correct application.

Petitioner's arguments have been considered, but not found persuasive. It is the applicant's responsibility to take the necessary action in an application under a final Office action to provide a complete reply under 37 CFR 1.113. It is clear here that applicant did not submit a proper reply². The entry of the terminal disclaimer by the paralegal does not make the terminal disclaimer proper. Upon consideration of the submission of the terminal disclaimer by the examiner it was determined that it was not proper. As stated in MPEP 714.03, an amendment should be denied entry if some point necessary for a complete reply under 37 CFR 1.113 (after final) was omitted, even if the omission was through an apparent oversight or inadvertence. Where a submission after a final Office action (e.g., an amendment under 37 CFR 1.116) does not place the application in condition for allowance, the period for reply under 37 CFR 1.113 continues to run until a reply under 37 CFR 1.113 (i.e., a notice of appeal or an amendment that places the application in condition for allowance) is filed. The nature of the omission (e.g., whether the amendment raises new issues, or would place the application in condition for allowance but for it being unsigned or not in compliance with 37 CFR 1.121) is immaterial. The examiner cannot give the applicant a time period under 37 CFR 1.135(c) to supply the omission; however, applicant may obtain additional time under 37 CFR 1.136(a) to file another or supplemental amendment in order to supply the omission.

In this instance, the terminal disclaimer had a material omission. It did not identify the correct application. The maximum period for reply expired without such correction. Accordingly, the application properly became abandoned.

² It is noted that in response to applicant's request for reconsideration filed November 29, 2006, the examiner determined that the final Office action would not be withdrawn. Moreover, the final Office action has not, in fact, been withdrawn and a double patenting rejection has not been entered. As such it is questionable whether even had the terminal disclaimer been proper would it have placed the application in condition for allowance.

Under the circumstances, withdrawal of the holding of abandonment is not warranted.

Applicant is not precluded from filing a petition to revive under 37 CFR 1.137. The filing of any such petition should not be intentionally delayed. See MPEP 711.03(c).

Receipt of the corrected terminal disclaimer filed October 3, 2007 is acknowledged. Any corrections with respect to approval of the terminal disclaimers filed in this application will be undertaken upon return of this application to pending status.


Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
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Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.


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